



January 14, 2003

By Facsimile and Certified Mail

Acting Chairman Carol Carmody
Member John Hammerschmidt
Member John Goglia
Member George Black, Jr.

National Transportation Safety Board
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Emery Worldwide Airlines Flight EB017, February 16,
2000
– EWA's Request that Inaccurate NTSB Investigator
Summaries of the NTSB Interviews of Paul Hall and
Shawn Dukes Be Removed from the Public Docket**

Dear Madam Chairman and Members of the Board:

On behalf of Emery Worldwide Airlines ("EWA"), I write to advise the Members of the National Transportation Safety Board ("NTSB") of the inclusion in the NTSB's public docket in the above-referenced accident investigation of inaccurate NTSB investigator summaries of interviews of two former EWA mechanics – Paul Hall and Shawn Dukes, and to formally request that those inaccurate summaries be removed from the public docket. I also write to request that the full Board consider the serious policy ramifications of the NTSB's action in this matter and to request that the Board establish a policy which prevents this from recurring.

The two interview summaries in question stem from NTSB investigator interviews of Messrs. Paul Hall and Shawn Dukes in April 2002. In October, the NTSB investigator who interviewed these mechanics provided to each of them a document purporting to be a summary of the investigator's interview with

that mechanic, and asked that each mechanic sign the summary of his interview. The investigator provided the summary of Mr. Dukes's interview to Mr. Dukes on approximately October 15, 2002, and the summary of Mr. Hall's interview to Mr. Hall on approximately October 18, 2002. Please note that these summaries appear to have been prepared several months after the interviews took place.

Immediately upon receiving the interview summaries from the investigator, and prior to any EWA official or employee having seen the summaries, each mechanic reviewed the summary of his interview and independently expressed to EWA officials his concern about the inaccuracy of the summary.

Acting as the personal representative of the two mechanics and EWA's party representative, Mr. Dick Hagquist of EWA immediately informed the NTSB, through the investigator, on or about October 18, 2002, of the concerns that both mechanics and EWA had regarding the inaccuracy of the summaries. At that time, the investigator and Mr. Hagquist agreed that Messrs. Hall and Dukes each would be permitted to prepare his own corrected interview summary rather than signing the investigator's inaccurate interview summary, and that the corrected summary would be included in the public docket rather than the summary prepared by the investigator. Based on the agreement between the investigator and Mr. Hagquist, Mr. Hall and Mr. Dukes each prepared their own summary of the interview. These summaries were forwarded to the Investigator in Charge (IIC) in this investigation and included in the public docket.

Despite the investigator's agreement regarding replacing the inaccurate summaries with corrected summaries prepared by the mechanics themselves, the IIC entered these inaccurate summaries into the public docket on October 27, 2002. EWA, on several occasions, has objected to the inclusion in the public docket of the inaccurate summaries prepared by the investigator. These objections have been both oral and in writing (including the attached letter dated November 15, 2002 from Mr. Hagquist to the IIC). Nevertheless, based on a recent communication to EWA from the IIC, it is clear that the NTSB staff does not plan to remove these inaccurate summaries from the public docket.

It is our understanding that the staff apparently believes that the inclusion in the public docket of the contradictory versions of the interview summaries serves the public interest because it "provides balance" in the docket. We, on the other hand, do not agree that it serves anyone's interests to have two different and contradictory versions of a summary of the very same interview in a government agency factual docket. While there can always be different ways to analyze the same set of facts, we do not believe that the Board should be introducing into its own docket two versions of the same "fact" (i.e., what the witness said). This can only detract from the credibility of any analysis which is to follow.

Since the staff has indicated that it does not plan to remove these inaccurate summaries from the docket, we are left with no choice but to request corrective action from the full Board. We believe that such corrective action is warranted here for the following reasons.

The summaries appear to have been prepared by the investigator months after the interviews, rather than contemporaneously, when the interviews would have been fresh in the investigator's mind.

The two mechanics interviewed have clearly stated that there were significant inaccuracies in the interview summaries prepared by the investigator, and they each have supplied to the NTSB both a corrected summary and a written statement identifying the areas where the summary of their interview prepared by the investigator was inaccurate.

Once the investigator had been advised of the inaccuracies in the two summaries he had prepared, he agreed with the EWA party representative that the mechanics would be permitted to prepare their own corrected summaries and to have them used by the NTSB instead of the inaccurate summaries prepared by the investigator. The NTSB failed to follow through on this agreement.

Not only are the interview summaries prepared by the investigator inaccurate in terms of their description of what was said by the EWA mechanics in the interviews, there is also a very misleading note placed at the bottom of the summaries. The Note in Mr. Hall's summary says, in pertinent part: "The letter [transmitting the summary] was re-sent [to Mr. Hall] on October 17th with a return date of October 24th. No comments were received by the deadline." (Emphasis added.) A virtually identical Note was included at the bottom of the summary of the interview of Mr. Dukes. In fact, Mr. Hagquist of EWA (who has acted as the personal representative of both Mr. Hall and Mr. Dukes throughout this process) called the investigator on or about October 18th (but well in advance of the October 24th "deadline") in his capacity as Mr. Hall's and Mr. Dukes's representative and advised the investigator that both mechanics felt that the summaries of their interviews were inaccurate. The statement in the Note at the bottom of the summaries that "No comments were received by the deadline" therefore clearly is incorrect, and could well lead the public to conclude, erroneously, that these mechanics had no comments or concerns about the accuracy of the summaries, when in fact, this clearly is not the case. We simply cannot understand why these Notes were included at the bottom of these summaries.

There were three EWA mechanics interviewed by the investigator in April 2002, and all three of these mechanics independently stated that there were significant inaccuracies in the summaries of their interviews prepared by the investigator.

Perhaps most importantly, from a policy standpoint, we believe that the Members of the Board need to address an important policy question which this matter has raised. Traditionally, NTSB accident investigation public docket entries related to NTSB witness interviews have been in the form of either: (1) a verbatim transcript, or (2) a witness statement or interview summary contemporaneously prepared by the witness himself or such a statement or summary contemporaneously prepared by an investigator, reviewed for accuracy by the witness, and signed off on by the witness to confirm its accuracy. In EWA's view, this is the correct approach to developing written records of NTSB witness interviews, because it ensures the accuracy of the material going into the docket.

Unfortunately, what occurred in this instance is a radical departure from this traditional approach, and in our view represents an extremely poor precedent from a policy standpoint. The approach followed here permitted the investigator's belated impression of what was said in the interview to be entered into the docket as fact, despite his lack of any personal knowledge of the events inquired about in the interview, and despite the fact that those who did have such personal knowledge have asserted that the investigator's impression is incorrect.

We respectfully suggest that the NTSB's credibility is at stake here. If in the future the public docket record of an NTSB witness interview is going to be a unilateral NTSB investigator's characterization of what the witness said rather than a verbatim transcript or a summary prepared by, or signed off on as accurate by, the witness himself, prospective witnesses will have every reason to be very wary of NTSB interviews and thus less forthcoming with the Board and its investigators. In addition, the work product of the Board based on such questionable "facts" is likely to have far less credibility in the Aviation community. In light of this, EWA believes it is important for the Board Members of the NTSB to establish a reasonable and fair-minded policy on the form of record of a witness interview which is permitted to be included in the public docket.

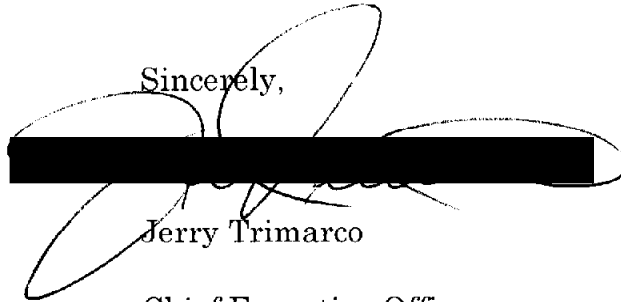
For these reasons, EWA respectfully requests that the Board Members:

1. Act to have the inaccurate summaries of the interviews of Paul Hall and Shawn Dukes prepared by the investigator removed from the public docket in this investigation; and

2. Establish a policy that any written record of an NTSB witness interview in an accident investigation must be in the form of either a verbatim transcript or a witness statement or interview summary prepared by the witness or signed off on as correct by the witness.

EWA very much appreciates the Board Members' attention to this matter of serious concern to the company.

Sincerely,

A handwritten signature in black ink, which has been partially obscured by a thick black horizontal redaction bar. The signature is written in a cursive style.

Jerry Trimarco

Chief Executive Officer

cc: Ronald Battochi, Esquire, General Counsel, GC-1
Mr. Frank Hildrup



November 15, 2002

By Facsimile and Certified Mail

Mr. Frank Hildrup
Major Investigations Division
National Transportation Safety Board
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Emery Worldwide Airlines Flight EB017, February 16,
2000 – EWA's Objections to the NTSB Summaries of the
NTSB Interviews of Paul Hall and Shawn Dukes**

Dear Mr. Hildrup:

As you are aware, I am the Emery Worldwide Airlines ("EWA") party representative in the above-referenced NTSB accident investigation. In addition, two former EWA employees, Shawn Dukes and Paul Hall, have asked me to serve as their personal representative in connection with NTSB interviews in this investigation. In these capacities I am forwarding to you the attached written comments by Mr. Shawn Dukes and Mr. Paul Hall regarding the inaccuracies in the summaries of their NTSB interviews which were prepared by Mr. Steve Carbone and included in the NTSB public docket on the accident investigation.

The two summaries in question deal with NTSB interviews by Mr. Stephen Carbone of Messrs. Shawn Dukes and Paul Hall in April 2002. In October, Mr. Carbone provided to each mechanic a document purporting to be a summary of Mr. Carbone's interview with that mechanic and asked that each mechanic sign the summary of his interview. Mr. Carbone provided the summary of Mr. Dukes's interview to Mr. Dukes on approximately October 15, 2002, and the summary of Mr. Hall's interview to Mr. Hall on approximately October 18, 2002. Please note that these summaries appear to have been prepared approximately six months after the interviews took place.

Immediately upon receiving the interview summaries from Mr. Carbone, each witness reviewed the summary of his interview and independently expressed his concern with the accuracy of the summary. Mr. Dukes expressed his concern to Mr. Bruce Robbins of EWA on the same day that Mr. Dukes received the summary from Mr. Carbone, and repeated his concern to me on the following Monday, October 18, 2002. Mr. Hall expressed his concern to me on the same day that Mr. Hall received the summary from Mr. Carbone. Both mechanics independently reviewed Mr. Carbone's summary of their interview and independently formed and expressed their concerns well before EWA had seen, or even had access to, either summary.

Acting as the personal representative of the two mechanics and EWA's party representative, I immediately informed the NTSB, through Mr. Carbone, on or about October 18, 2002, of the concerns that both mechanics and EWA had regarding the inaccuracy of the summaries. At that time, Mr. Carbone and I agreed that Messrs. Dukes and Hall would follow the same procedure that had been followed in the case of Norbert Drees, one of the three other former EWA mechanics who found inaccuracies in the summaries of their interviews prepared by Mr. Carbone. In Mr. Drees's case, he completed a statement of his recollection of the incident rather than signing Mr. Carbone's interview summary, and the statement Mr. Drees prepared was included in the public docket. Based on the agreement with Mr. Carbone, Mr. Dukes and Mr. Hall each prepared their own summary of the interview. These summaries were forwarded to you and included in the public docket.

Despite Mr. Carbone's agreement to this approach, the inaccurate interview summaries of the interviews of Messrs. Dukes and Hall created by Mr. Carbone were entered into the public docket on October 27, 2002. When you advised the parties that you intended the original summaries of the interviews of Mr. Dukes and Mr. Hall prepared by Mr. Carbone to remain in the docket, Mr. Dukes and Mr. Hall prepared the attached written comments on the inaccuracies in those summaries. As you will note from these written comments, both Mr. Dukes and Mr. Hall state that Mr. Carbone's summary of their interview differs sharply from their recollection of the interview.

EWA is quite surprised that the NTSB entered these inaccurate documents into the public docket (i) only approximately five working days after each mechanic first received the summary of his interview, (ii) after both mechanics, through their personal representative, had advised the NTSB that the statements were inaccurate, and (iii) after the NTSB interviewer had agreed that the mechanics would be able to complete and file with the NTSB their own replacement summaries which corrected inaccuracies in the summaries prepared by Mr. Carbone.

In light of these facts, Messrs. Dukes and Hall and EWA request that the summaries of the interviews prepared by Mr. Carbone be removed from the public docket. EWA requests that be done no later than November 22. If you are unwilling to remove these summaries from the docket, EWA intends to pursue this matter with all the Board Members.

We very much appreciate your prompt attention to our concerns.

Sincerely,

A black rectangular redaction box covers the signature of Richard A. Hagquist.

Richard A. Hagquist
Party Representative
Emery Worldwide Airlines

cc: Member John Goglia, ME-2
Ronald Battochi, General Counsel, GC-1

1

**Shawn Dukes' Comments on the Inaccuracies in Mr. Stephen Carbone's Summary of
the NTSB Interview of Shawn Dukes**

Mr. Carbone says that I was interviewed on April 16, 2002. During the interview, Mr. Carbone asked me several questions.

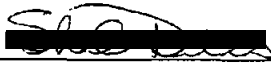
In Mr. Carbone's summary of the interview, there were some inaccuracies that I would like to correct.

Mr. Carbone says that I was the "Lead performing Required Inspection duties for the maintenance tasks accomplished." However, there was only one maintenance task accomplished for this gripe.

Mr. Carbone says "Mr. Dukes stated that 3rd shift was involved in re-installing some access panels, though he could not say what panels had been removed and were being installed." I do not recall this question being asked. I do not recall answering any questions that dealt with panels. Additionally, I did not see any panel removed or re-installed in connection with the damper swap, other than the panel directly under the damper to facilitate the removal of the damper.

Mr. Carbone says that I said that I "was not able to identify the damper's original positions." I do not recall making this statement. I did inform Mr. Carbone that I was not there at the time that the dampers were identified as being in the incorrect position and that they had been swapped before my shift began.

Mr. Carbone said that I said, "Greg Lusk was the previous shift Lead." I do not recall being asked about the Lead of the previous shift and do not recall Mr. Lusk's name being part of the interview. Mr. Carbone goes on to say that Mr. Lusk said things about the post-maintenance checks performed on the job. Again, I do not recall Mr. Lusk's name being raised during the interview, and I do not know anything about what Mr. Lusk said about the post-maintenance checks performed on this job. I did discuss the post-maintenance checks performed on the job with Mr. Carbone, and Mr. Carbone's list accurately reflects the post-maintenance checks that I am aware of.




Shawn Dukes

11-18-02
Date

**Paul Hall's
Comments on the Inaccuracies in Mr. Stephen Carbone's Summary of the NTSB
Interview of Paul Hall**

The following are concerns that I have after reviewing the summarized version of the interview between Mr. Carbone and myself.

1. The summary states that I "supervised the completion of the B-2 Check":
 - I never said this in the interview. I was not the Supervisor for the B-2 Check. I was a Lead and performed inspections as required by the sign-off's on the Task Cards.
2. The summary states that the inspection "did require a panel removal to visually inspect attach point (s) during the elevator and tab inspection". That is not what I said, and it is not correct:
 - What I stated was that I thought there might be some "swing down panel" that had to be lowered during the lube of the elevators and tabs. While I did say that there might be some "swing down panel" that needed to be lowered during the B-2 check, I did not say that there were any panels that needed "removal" in connection with a B-2 Check.
 - The "swing down panel" I am referring to is the one used to gain access to the inside of the tail of the aircraft.
 - The B009 card from the B-2 Check does not call for an Inspector to sign-off and I would not have been involved in the completion of the card.
 - This inspection card B009, Page 1 of 1, did not require the removal of any panels. If it did require a removal; it would tell the mechanic to remove them.



Paul Hall

18 NOV 02
Date